

EXHIBIT

1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

ULTIMA SERVICES CORPORATION,

Plaintiff,

v.

Case No.

U.S. DEPARTMENT OF AGRICULTURE,

2:20-cv-0041-

U.S. SMALL BUSINESS ADMINISTRATION,

DCLD-CRW

SECRETARY OF AGRICULTURE, and

ADMINISTRATOR OF THE SMALL BUSINESS

ADMINISTRATION,

Defendants.

VIDEOCONFERENCE DEPOSITION OF

AMY STONEBRAKER

DATE: Wednesday, May 25, 2022

TIME: 9:32 a.m.

LOCATION: Remote Proceeding - DC
Washington, DC 20005

REPORTED BY: Timothy Guevara, Notary Public

JOB NO.: 5242863

<p style="text-align: center;">5242863-2</p> <p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF PLAINTIFF ULTIMA SERVICES CORPORATION:</p> <p>3 MICHAEL E. ROSMAN, ESQUIRE (by videoconference)</p> <p>4 MICHELLE SCOTT, ESQUIRE (by videoconference)</p> <p>5 Center for Individual Rights</p> <p>6 1100 Connecticut Avenue Northwest, Suite 625</p> <p>7 Washington, DC 20036</p> <p>8 rosman@cir-usa.org</p> <p>9 scott@cir-usa.org</p> <p>10 (202) 833-8402</p> <p>11</p> <p>12 ON BEHALF OF DEFENDANTS U.S. DEPARTMENT OF</p> <p>13 AGRICULTURE, U.S. SMALL BUSINESS ADMINISTRATION,</p> <p>14 SECRETARY OF AGRICULTURE, AND ADMINISTRATOR OF THE</p> <p>15 SMALL BUSINESS ADMINISTRATION:</p> <p>16 JULIET GRAY, ESQUIRE (by videoconference)</p> <p>17 Department of Justice Civil Rights Division</p> <p>18 Employment Litigation Section</p> <p>19 150 M Street Northeast</p> <p>20 Washington, DC 20530</p> <p>21 juliet.gray@usdoj.gov</p> <p>22 (202) 514-3831</p> <p style="text-align: center;">Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>	<p style="text-align: center;">5242863-2</p> <p style="text-align: right;">Page 4</p> <p>1 P R O C E E D I N G S</p> <p>2 THE REPORTER: Good morning. My name</p> <p>3 is Timothy Guevara; I am the reporter assigned by</p> <p>4 Veritext to take the record of this proceeding. We</p> <p>5 are now on the record at 9:32 a.m.</p> <p>6 This is the deposition of Amy</p> <p>7 Stonebraker taken in the matter of Ultima Services</p> <p>8 Corporation against U.S. Department of Agriculture,</p> <p>9 U.S. Small Business Administration, Secretary of</p> <p>10 Agriculture, and Administrator of the Small Business</p> <p>11 Administration, Case Number 2:20-cv-00041-DCLC-CRW, on</p> <p>12 May 25, 2022, taken remotely via Zoom.</p> <p>13 I am a notary authorized to take</p> <p>14 acknowledgements and administer oaths in the District</p> <p>15 of Columbia. Parties agree that I will swear in the</p> <p>16 witness remotely outside of her presence.</p> <p>17 Additionally, absent an objection on</p> <p>18 the record before the witness is sworn, all parties</p> <p>19 and the witness understand and agree that any</p> <p>20 certified transcript produced from the recording,</p> <p>21 virtually, of this proceeding:</p> <p>22 - is intended for all uses permitted</p> <p style="text-align: center;">Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>
<p style="text-align: center;">5242863-2</p> <p style="text-align: right;">Page 3</p> <p>1 I N D E X</p> <p>2 EXAMINATION: PAGE</p> <p>3 By Mr. Rosman 6</p> <p>4 By Ms. Gray 99</p> <p>5</p> <p>6 E X H I B I T S</p> <p>7 NO. DESCRIPTION PAGE</p> <p>8 Exhibit 1 MS1 Status Emails 34</p> <p>9 Exhibit 2 MS2 Status Emails 39</p> <p>10 Exhibit 3 MS3 NRCS Request Letter, 9/6/18 43</p> <p>11 Exhibit 4 MS4 Denison Adverse Impact Letter</p> <p>12 To USDA, 9/20/18 45</p> <p>13 Exhibit 5 Decision Memo 56</p> <p>14 Exhibit 6 VA1 PCI Offer Letter 76</p> <p>15 Exhibit 7 VA2 PCI Contract (2021) 80</p> <p>16 Exhibit 8 VA3 2019 Offer Letter 85</p> <p>17 Exhibit 9 VA4 2019 Acceptance Letter 86</p> <p>18 Exhibit 10 GA1 Rividium Contract 94</p> <p>19 (Exhibits attached.)</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: center;">Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>	<p style="text-align: center;">5242863-2</p> <p style="text-align: right;">Page 5</p> <p>1 under applicable procedural and</p> <p>2 evidentiary rules and laws in the same</p> <p>3 manner as a deposition recorded by</p> <p>4 stenographic means; and</p> <p>5 - shall constitute written stipulation</p> <p>6 of such.</p> <p>7 At this time will everyone in</p> <p>8 attendance please identify yourself for the record.</p> <p>9 We can begin with you, Mr. Rosman.</p> <p>10 MR. ROSMAN: I'm Michael Rosman. I'm</p> <p>11 representing the plaintiff in this matter.</p> <p>12 THE REPORTER: Ms. Scott.</p> <p>13 MS. SCOTT: I'm Michelle Scott. I</p> <p>14 represent the plaintiff in this matter.</p> <p>15 THE REPORTER: Ms. Gray.</p> <p>16 MS. GRAY: I'm Juliet Gray. I</p> <p>17 represent the defendants in this matter.</p> <p>18 THE REPORTER: Thank you. And Ms.</p> <p>19 Stonebraker, will you please just identify yourself</p> <p>20 for the record, please?</p> <p>21 MS. STONEBRAKER: Yes. My name is Amy</p> <p>22 Stonebraker.</p> <p style="text-align: center;">Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>

<p style="text-align: center;">5242863-2</p> <p style="text-align: right;">Page 110</p> <p>1 Q Has anyone ever told you that they used the</p> <p>2 8(a) program to meet an SDB goal?</p> <p>3 A I have never had anyone indicate that they</p> <p>4 used it to meet a goal, no.</p> <p>5 Q We looked at a couple of different contracts</p> <p>6 in which you indicated that the wrong NAICS code was</p> <p>7 used. Do you recall that?</p> <p>8 A Yes -- yes.</p> <p>9 Q I understand you aren't the one who issued</p> <p>10 those contracts, so you can't speak to them in</p> <p>11 particular, but do you have any understanding of how</p> <p>12 that might happen?</p> <p>13 A The NAICS codes, I think I mentioned, have a</p> <p>14 general description of what's covered within the</p> <p>15 NAICS. And so the contracting officer read -- has to</p> <p>16 read and interpret and determine that that NAICS code</p> <p>17 would be appropriate for a specific requirement. It</p> <p>18 does not give detailed information or breakdown, labor</p> <p>19 types, for you to have a very defined, you know, clear</p> <p>20 pinpointed, this is the one. So it's possible that a</p> <p>21 CO may choose one that they felt was appropriate, that</p> <p>22 maybe there was one that was more appropriate.</p> <p style="text-align: center;">Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>	<p style="text-align: center;">5242863-2</p> <p style="text-align: right;">Page 112</p> <p>1 Where the difference occurs is in profit and overhead</p> <p>2 rates. But I haven't seen where they are charging a</p> <p>3 fee that isn't in line with non-8(a) companies</p> <p>4 performing the same type of services.</p> <p>5 MS. GRAY: Okay. I have no further</p> <p>6 questions.</p> <p>7 MR. ROSMAN: Nothing on my end.</p> <p>8 THE REPORTER: Before we go off the</p> <p>9 record, I just want to verify the orders for the</p> <p>10 transcript. So Mr. Rosman, I just want to verify,</p> <p>11 would you order the transcript of today's deposition?</p> <p>12 MR. ROSMAN: Yes.</p> <p>13 THE REPORTER: Okay. Is physical copy</p> <p>14 okay or any specific type?</p> <p>15 MR. ROSMAN: Physical copy?</p> <p>16 THE REPORTER: Paper transcript.</p> <p>17 MR. ROSMAN: I didn't know anyone made</p> <p>18 physical copies before. Whatever we've been getting</p> <p>19 in the past, the PDF.</p> <p>20 MS. SCOTT: Electronic.</p> <p>21 MR. ROSMAN: Michelle will take over</p> <p>22 here. Go ahead.</p> <p style="text-align: center;">Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>
<p style="text-align: center;">5242863-2</p> <p style="text-align: right;">Page 111</p> <p>1 Q So in your experience, do COs or contract</p> <p>2 specialists sometimes make mistakes in picking NAICS</p> <p>3 codes?</p> <p>4 A Sure. Absolutely. Well we've seen it twice</p> <p>5 today.</p> <p>6 Q Are you familiar with any situation in which</p> <p>7 a CO used the NAICS code in order to get a higher</p> <p>8 small business-size threshold or to use the NAICS code</p> <p>9 that would have a higher small business-size</p> <p>10 threshold?</p> <p>11 A I am not aware of anyone that has ever done</p> <p>12 that in order to change the -- the dollar threshold.</p> <p>13 Q In your experience is the cost of using the</p> <p>14 8(a) program any higher or lower than using other</p> <p>15 methods of procurement?</p> <p>16 A I have never seen a difference in -- in the</p> <p>17 cost to award 8(a). Generally, when you're buying</p> <p>18 admin support services, it's -- it's a Service</p> <p>19 Contract Act wage determination driven for the rates</p> <p>20 that are paid to the contractor employees. And I</p> <p>21 generally see that the contractor offers the minimum</p> <p>22 rate that's established in those wage determinations.</p> <p style="text-align: center;">Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>	<p style="text-align: center;">5242863-2</p> <p style="text-align: right;">Page 113</p> <p>1 MS. SCOTT: Just the electronic is what</p> <p>2 we've been getting, so that's fine.</p> <p>3 THE REPORTER: Okay. And for Ms. Gray,</p> <p>4 a copy of the transcript for you as well?</p> <p>5 MS. GRAY: Yes. And I think we've</p> <p>6 already ordered it to be expedited.</p> <p>7 THE REPORTER: Yes, okay. I did see</p> <p>8 the note for that. Okay. And will you be reading and</p> <p>9 signing?</p> <p>10 MS. GRAY: Yes.</p> <p>11 MR. ROSMAN: If you are sending to them</p> <p>12 early, could you just notify us when it's being sent</p> <p>13 so we can keep track of the time?</p> <p>14 THE REPORTER: Yes. Our office will</p> <p>15 reach out as soon as it's being sent.</p> <p>16 MR. ROSMAN: No. I'm asking if you can</p> <p>17 let us know when it's being sent to the defendants.</p> <p>18 THE REPORTER: Oh, yes. They will</p> <p>19 notify you as soon as anything is being sent to</p> <p>20 anyone. They will reach out to your office.</p> <p>21 MR. ROSMAN: Thank you.</p> <p>22 THE REPORTER: Okay. We are off the</p> <p style="text-align: center;">Veritext National Court Reporting Company 202-857-3376 302-571-0510 410-837-3027 610-434-8588 215-241-1000</p>